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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,011	03/02/2004	Jeffrey A. Meunier	010886.00632	1288
22908 7590 06/09/2009 BANNER & WITCOFF, LTD. TEN SOUTH WACKER DRIVE SUITE 3000 CHICAGO, IL 60606				
EXAMINER				
LE, HUYEN D				
ART UNIT		PAPER NUMBER		
2614				
MAIL DATE		DELIVERY MODE		
06/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/791,011

Applicant(s)

MEUNIER ET AL.

Examiner

HUYEN D. LE

Art Unit

2614

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 51, 52 and 56-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 51, 52 and 56-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 12/17/08 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

The International Search Report for PCT/US2004/006394 in the Non-Patent Literature documents filed 12/17/08 has not been considered since it is not placed in the record.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lateralization circuit must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the

renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Allowable Subject Matter

3. The indicated allowability of claims 51 and 52 is withdrawn in view of the newly discovered reference(s) to Paulson et al. (WO 2004/064443) and Yamada et al. (US 4,097,689). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 51, 52 and 56-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paulson et al. (WO 2004/064443) in view of Yamada et al. (US 4,097,689).

Regarding claims 51, 52, 65-72, 81, 82, 84 and 85, Paulson et al. teaches a communications headset (figures 1B, 2, 3, 4, 5, 6) which comprises a first housing (110, 305, 410, 505A, 520A) having a first speaker driver (315, 415), a first nozzle (366, figure 3), a first acoustically isolating ear piece (150, 365, 440) coupled to the first nozzle, and a microphone (130, 205, 430 and see figures 1B, 2, 4, 5, 5A), wherein the first earpiece and the first housing provide at least 15 dB of acoustic isolation from ambient sound as claimed (page 5, lines 3-7 and page 6, lines 12-18). Paulson further teaches a second housing, a second nozzle and a second acoustically isolating ear piece as claimed (figures 5A). However, Paulson et al. lacks the teaching of the lateralization means or lateralization circuit as claimed.

Yamada et al. teaches a headphone device that comprises a lateralization means for manipulating a first signal to the first speaker driver and a second signal to the second speaker driver to create a sensation as claimed (see the abstract and figures 5, 7, 11, 12).

Since Yamada teaches the lateralization means or lateralization circuit to manipulate a first signal to the first speaker driver (8) and a second signal to the second speaker driver (9) in a headphone assembly; it therefore would have been obvious to one skilled in the art to provide the circuit, as taught by Yamada, in the earphone assembly of Paulson et al. for providing an improved sound frequency characteristics and an optimum listening condition.

Regarding claims 56 and 73, Paulson et al. teaches the first acoustically isolating ear piece (150, 365, 440) is conformable within the ear canal.

Regarding claims 57-59, 74 and 75, Paulson et al. shows the microphone that is coupled to a boom assembly as claimed (120, 130, 210, 205, 345, 420, 430 and see figures 1B, 2, 3, 4, 5, 5A).

Regarding claims 60-62 and 76-78, Paulson et al. shows the cable as claimed (figures 1A, 1B, 3, 5, 5A).

Regarding claims 63, 64, 79 and 80, Paulson et al. does not specifically disclose the microphone (130, 205, 430) as claimed. However, the examiner takes the Office Notice that providing a directional microphone in the earphone or headphone assembly is very well known in the art.

Therefore, it would have been obvious to one skilled in the art to provide any type of microphones in the Paulson device such as a directional microphone that is selected from the group consisting of cardioid microphones, bi-directional microphones and hypercardioid microphones for an alternate choice.

Regarding claim 83, Paulson et al. shows the cable (512A) providing the second signal to the second speaker driver (511A, figure 5A).

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HUYEN D. LE whose telephone number is (571) 272-7502. The examiner can normally be reached on 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CURTIS KUNTZ can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HUYEN D. LE/
Primary Examiner, Art Unit 2614

HL
June 06, 2009